

Message Text

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APPROVED BY THE DEPUTY SECRETARY

S/S-O:AOTTO

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C O N F I D E N T I A L STATE 050342 TOSEC 060041

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EXDIS, FOR THE SECRETARY FROM THE DEPUTY SECRETARY

E.O. 11652: ADS

TAGS: PGOV

SUBJECT: ACTION MEMORANDUM: CORRUPT PRACTICES: LOCKHEED
CASE: MY TESTIMONY BEFORE PROXMIRE SUBCOMMITTEE, MARCH 3
(S/S NO. 7604304)

1. THE PROBLEM: SENATOR PROXMIRE'S SUBCOMMITTEE ON -
PRIORITIES AND ECONOMIES IN GOVERNMENT OF THE JOINT
ECONOMIC COMMITTEE HAS BEEN HOLDING HEARINGS ON THE
FOREIGN PAYMENTS PROBLEM WITH PARTICULAR ATTENTION TO
THE LOCKHEED CASE. PROXMIRE IS A STRONG PROPONENT OF
PUBLIC DISCLOSURE OF THE NAMES OF FOREIGN RECIPIENTS AS
A DETERRENT TO BRIBERY AND IS CRITICAL OF YOUR LETTER
TO THE COURT IN THE SEC-LOCKHEED CASE. HE REQUESTED ME
TO TESTIFY ON MARCH 3 ON THE ECONOMIC IMPLICATIONS OF THE
PROBLEM, AND, AS ROBINSON IS AWAY, I AGREED TO DO SO.

YOU WILL BE RECEIVING BY SEPTTEL (1) FULL TEXT OF MY DRAFT
STATEMENT AND (2) A REPORT ON MONROE LEIGH'S EFFORTS TO
CONFIDENTIAL

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NEGOTIATE AN ARRANGEMENT WITH JAPAN FOR HANDLING THE
LOCKHEED CASE. THIS MEMORANDUM REQUESTS YOUR APPROVAL
OF THE MAIN POINTS OF MY STATEMENT.

2. BACKGROUND: THE EXPANDING DISCLOSURE OF ILLICIT PAYMENTS BY U.S. COMPANIES ABROAD IS BECOMING AN INCREASINGLY SERIOUS PROBLEM IN U.S. FOREIGN RELATIONS. IN ADDITION TO THE DAMAGE DONE TO PARTICULAR COMPANIES ABROAD, THE DISCLOSURES DAMAGE THE REPUTATION OF ALL U.S. BUSINESS AND OF THE ENTIRE WESTERN ECONOMIC SYSTEM AND CAUSE SERIOUS INTERNAL POLITICAL PROBLEMS FOR FRIENDLY FOREIGN GOVERNMENTS. THE DEPARTMENT HAS PUBLICLY ADDRESSED THESE CONCERNS AND CONDEMNED ILLICIT PAYMENTS IN THE STRONGEST TERMS. WE HAVE ALSO ADVISED THE COURTS (PUBLICLY) AND CONGRESSIONAL COMMITTEES (PRIVATELY) OF OUR CONCERN THAT PREMATURE PUBLIC DISCLOSURE OF THE NAMES OF FOREIGN OFFICIALS WHO ARE IMPLICATED BY UNSUBSTANTIATED CHARGES COULD UNFAIRLY DAMAGE REPUTATIONS AND CAUSE SERIOUS PROBLEMS IN U.S. FOREIGN RELATIONS. AT THE SAME TIME, WE HAVE FULLY SUPPORTED LAW ENFORCEMENT INVESTIGATIONS BY U.S. AND FOREIGN AUTHORITIES, AND HAVE CONSISTENTLY MAINTAINED THAT THE SEC SHOULD HAVE FULL ACCESS TO LOCKHEED DOCUMENTS INCLUDING SUCH PUBLIC DISCLOSURE THEREOF AS IS NECESSARY TO ENFORCE THE SECURITIES LAWS. CONTRARY TO IMPLICATIONS IN RECENT PRESS REPORTS, WE HAVE NEVER OBJECTED TO THE DISCLOSURE OF PERTINENT INFORMATION TO AFFECTED FOREIGN GOVERNMENTS AND HAVE URGED U.S. AGENCIES TO COOPERATE FULLY WITH THEM. MOREOVER, THE CHURCH COMMITTEE POLICY TO WITHHOLD PUBLIC DISCLOSURE OF ALLEGED FOREIGN RECIPIENTS WAS THE DECISION OF THAT COMMITTEE NOT OF THE DEPARTMENT. WHILE THE COMMITTEE IS WELL AWARE OF OUR CONCERNS AND OF OUR AGREEMENT WITH ITS DETERMINATION, WE MADE NO SPECIFIC REQUEST IN THE LOCKHEED CASE.

3. AT THE PRESENT TIME THE MAJOR ISSUES FOR THE DEPARTMENT INVOLVE (1) WHAT POSITION TO TAKE ON PROPOSALS FOR U.S. LEGISLATION REQUIRING DISCLOSURE BY U.S. COMPANIES OF PAYMENTS MADE ABROAD; (2) HOW TO REACT TO CONGRESSIONAL AND LDC DEMANDS FOR INTERNATIONAL ACTION TO DEAL WITH CORRUPT PRACTICES AND (3) HOW TO RESPOND TO FOREIGN GOVERNMENTAL

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MENT REQUESTS FOR INFORMATION IN THE POSSESSION OF U.S. LAW ENFORCEMENT AGENCIES AND CONGRESSIONAL COMMITTEES. THE DEPARTMENT HAS OPPOSED EXTRATERRITORIAL LEGISLATION MAKING FOREIGN PAYMENTS CRIMINAL UNDER U.S. LAW, AND HAS EXPRESSED RESERVATIONS ABOUT GENERAL DISCLOSURE LEGISLATION, ON THE GROUNDS THAT IT IS THE RESPONSIBILITY OF EACH COUNTRY TO ESTABLISH AND ENFORCE THE STANDARDS OF CONDUCT FOR THAT SOCIETY AND THAT THE USG SHOULD NOT OVERSEE THE CONDUCT OF FOREIGN OFFICIALS IN THEIR OWN COUNTRIES. WE HAVE, HOWEVER, CONSISTENTLY DEFERRED TO OTHER U.S. AGENCIES, SUCH AS SEC AND IRS, RESPECTING ANY ADDITIONAL AUTHORITY THEY MAY NEED TO MEET THEIR RESPONSIBILITIES TO PROTECT SPECIFIC U.S. INTERESTS. WE HAVE ALSO STRESSED

THE NEED TO TIGHTEN UP USG PROGRAMS OVERSEAS, SUCH AS FMS PROCEDURES, TO AVOID ABUSES. IN THIS CONNECTION, WE CAN SUPPORT THE GENERAL LINES OF THE REVISED CHURCH-PERCY AMENDMENT TO THE SECURITY ASSISTANCE ACT REQUIRING REPORTING TO THE EXECUTIVE AND CONGRESS OF AGENTS FEES AND SIMILAR PAYMENTS ON MILITARY SALES ALTHOUGH FURTHER IMPROVEMENTS IN THESE PROVISIONS WOULD BE DESIRABLE.

4. WE ARE STILL RELUCTANT TO SUPPORT UNILATERAL, GENERAL DISCLOSURE INFORMATION OF THE SORT ENVISIONED BY SENATOR CHURCH. SUCH UNILATERAL ACTION WOULD PUT U.S. COMPANIES AT A STRONG COMPETITIVE DISADVANTAGE IN THE EXPORT MARKET AND VALIDATE SOME LDC EFFORTS TO DEPICT CORRUPT PRACTICES AS A U.S. EXPORT TO BE STOPPED BY U.S. ACTION ONLY. BOTH ON ECONOMIC AND POLITICAL GROUNDS, THEREFORE, WE SHOULD MAINTAIN THAT THIS IS AN INTERNATIONAL PROBLEM WHICH REQUIRES AN INTERNATIONAL APPROACH. THIS IS RECOGNIZED BY S. RES. 265 WHICH CALLS FOR A MULTILATERAL AGREEMENT WITH TEETH. YOU EMPHASIZED THE INTERNATIONAL APPROACH IN YOUR STATEMENT IN LATIN AMERICA THAT THE U.S.

COULD SUPPORT A BINDING INTERNATIONAL AGREEMENT ON BRIBERY. WE PLAN TO INSTRUCT OUR DELEGATION TO THE UN PERMANENT COMMISSION ON TNC'S WHICH MEETS IN LIMA BEGINNING TODAY TO TAKE A STRONG INITIATIVE FOR SUCH AN AGREEMENT. IF YOU APPROVE, I WILL ANNOUNCE THIS INITIATIVE AT MY TESTIMONY WEDNESDAY. WHILE WE HAVE WORKED CLOSELY WITH TREASURY AND COMMERCE ON THIS, SIMON AND PARSKY ARE HAVING SECOND CONFIDENTIAL

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THOUGHTS ABOUT A "BINDING" INTERNATIONAL AGREEMENT ON BRIBERY (ALTHOUGH HE IS UNCLEAR AS HOW AN INTERNATIONAL AGREEMENT CAN BE OTHER THAN BINDING). I SUGGEST WE DEAL WITH SIMON'S HESITANCY BY SENDING HIM A CABLE ON YOUR BEHALF TELLING HIM WHY WE NEED TO BEGIN THE UN NEGOTIATION ON THE BASIS OF A BINDING AGREEMENT. A RECOMMENDED TEXT IS CONTAINED AT THE END OF THIS CABLE.

5. FOREIGN GOVERNMENT REQUESTS FOR INFORMATION ON LOCKHEED ARE POURING IN AND A RESPONSE IS REQUIRED URGENTLY. IN ADDITION TO JAPAN, WE ARE BEING PRESSED BY THE NETHERLANDS, ITALY, SPAIN, TURKEY AND COLOMBIA. OTHER REQUESTS CAN BE EXPECTED. UNFORTUNATELY, PRESS REPORTS HAVE GIVEN THE MISTAKEN IMPRESSION THAT YOU HAVE CONCERNS ABOUT PROVIDING DETAILS TO FOREIGN GOVERNMENTS AND THAT THE DEPARTMENT IS BEHIND THE CHURCH COMMITTEE'S REFUSAL TO MAKE PUBLIC DISCLOSURE. PROXMIRE CAN BE EXPECTED TO ACCUSE US OF COVER-UP. I WOULD LIKE TO SET THE RECORD STRAIGHT ON THESE MATTERS, AND IF POSSIBLE, TO ANNOUNCE THE PROCEDURES THAT HAVE BEEN ESTABLISHED WITH THE JUSTICE DEPARTMENT FOR PROVISION OF INFORMATION TO FOREIGN LAW ENFORCEMENT AGENCIES. THE LEGAL ADVISER

HAS ADVISED YOU OF THE STATUS OF THESE DISCUSSIONS
(SEPTTEL).

6. RECOMMENDATIONS: THAT YOU AUTHORIZE ME TO INCLUDE
THE FOLLOWING MAJOR POINTS IN MY STATEMENT TO THE PROXMIRE
SUBCOMMITTEE ON WEDNESDAY MORNING:

(1) REITERATE USG CONCERNS AT AND CONDEMNATION OF ILLICIT
PAYMENTS.

(2) SUPPORT STRONG ACTION TO ENFORCE EXISTING U.S. LAWS
BY REGULATORY AGENCIES AND IMPROVEMENT OF PROCEDURES FOR
MANAGEMENT OF USG PROGRAMS ABROAD.

(3) SUPPORT AN INTERNATIONAL APPROACH TO THE CORRUPT
PRACTICES PROBLEM AND OUTLINE THE BASIC PRINCIPLES OF
A BINDING INTERNATIONAL AGREEMENT ON CORRUPT PRACTICES.

(4) CLARIFY THE DEPARTMENT'S POSITION ON COOPERATION
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WITH FOREIGN GOVERNMENTS IN THE LOCKHEED CASE AND
ANNOUNCE, OR CONFIRM, ARRANGEMENTS ESTABLISHED BY THE
JUSTICE DEPARTMENT TO FACILITATE SUCH COOPERATION.
APPROVE; DISAPPROVE.

7. IN ADDITION, I RECOMMEND THAT YOU APPROVE THE
FOLLOWING CABLE TO SIMON:

BEGIN TEXT: I BELIEVE THAT WE NOW NEED TO FOLLOW UP ON
YOUR AND MY STATEMENTS THAT THE U.S. WILL PURSUE A
MULTILATERAL SOLUTION TO THE CORRUPT PRACTICES PROBLEM.
THE PROPOSAL STATE, TREASURY, AND OTHER AGENCIES HAVE
DEVELOPED CALLS FOR THE U.S. TO ANNOUNCE SIMULTANEOUSLY
IN LIMA (AT THE UN COMMISSION ON TNES) AND IN WASHINGTON
(THROUGH BOB INGERSOLL'S TESTIMONY BEFORE PROXMIRE) THAT
THE U.S. IS WILLING TO NEGOTIATE IN A UN EXPERT GROUP
A BINDING INTERNATIONAL AGREEMENT ON CORRUPT PRACTICES.
I UNDERSTAND THAT YOU HAVE SOME DOUBTS REGARDING
REFERENCE TO THE "BINDING" NATURE OF THE PROPOSED INTER-
NATIONAL AGREEMENT. I WANT TO INFORM YOU OF THE REASONS
WHY I BELIEVE OUR PROPOSALS FOR AN INTERNATIONAL
AGREEMENT ON CORRUPT PRACTICES HAVE TO BE IN THE CONTEXT
OF AN AGREEMENT BINDING ON GOVERNMENTS. IT IS CLEAR FROM
SENATE RESOLUTION 265 THAT OUR INITIATIVE FOR A MULTI-
LATERAL APPROACH WILL BE CONSIDERED CREDIBLE IN THE
CONGRESS ONLY IF THESE PROPOSALS DESCRIBE AN INTERNATIONAL
AGREEMENT BINDING ON GOVERNMENTS. A LESS EMPHATIC
INITIATIVE WOULD SIMPLY NOT SLOW DOWN THE DRIVE OF CHURCH
AND OTHERS FOR UNILATERAL U.S. SOLUTIONS BASED ON
PROSECUTION IN THE U.S. FOR CRIMES COMMITTED OVERSEAS.
IN ADDITION, ONLY A BINDING INTERNATIONAL AGREEMENT

FORCES THE LDC'S TO FACE THE CORRUPT PRACTICES PROBLEM
AS ONE FOR WHICH EFFECTIVE -- RATHER THAN RHETORICAL --
SOLUTIONS NECESSARILY INVOLVE MUTUAL ACTION AND
RESPONSIBILITIES. A NEGOTIATION ON ANY OTHER BASIS
WOULD ALLOW SOME OF THE RADICAL LDC'S TO LOAD THE

RESULTING DOCUMENT WITH ACCUSATORY RHETORIC AND
"OPERATIONAL" PROVISIONS TO BE OBSERVED BY U.S. AND
IGNORED BY OTHERS. FOR THESE REASONS, I STATED IN LATIN
AMERICA THAT OUR APPROACH TO INTERNATIONAL ACTION ON
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CORRUPT PRACTICES CALLS FOR A BINDING INTERNATIONAL
AGREEMENT.

I KNOW THAT YOU SHARE MY CONCERN OVER THIS PROBLEM AND
THE DAMAGE IT THREATENS TO DO TO THE STATUS WORLDWIDE
OF OUR FREE ECONOMIC SYSTEM AND TO OUR FOREIGN POLICY.
I THINK THEREFORE THAT YOU WILL SHARE MY JUDGEMENT THAT
OUR INITIATIVE FOR INTERNATIONAL ACTION HAS TO BE CAST
IN A FORM WHICH FORCES OTHERS TO COOPERATE IN SOLUTIONS
OR DECLARE THEIR UNWILLINGNESS TO DO SO -- IN SHORT, A
BINDING INTERNATIONAL AGREEMENT. IF YOU HAVE RESERVA-
TIONS WITH THIS APPROACH WE NEED TO IDENTIFY AND CLARIFY
THESE AS SOON AS POSSIBLE.

I SEE NO WAY TO FUDGE THIS QUESTION SINCE VAGUENESS BOTH
STARTS THE UN DISCUSSIONS WITH THE WRONG TERMS OF
REFERENCE, AND CONFUSES SERIOUSLY THE IMPACT OF OUR
INITIATIVE IN THE CONGRESS. WE MUST BE ABLE TO SAY
CLEARLY THAT WE ARE TALKING ABOUT AN INTERNATIONAL AGREE-
MENT THE IMPLEMENTATION OF WHICH WOULD COME TO THE
CONGRESS IN ONE FORM OR ANOTHER.

BOB INGERSOLL IS TESTIFYING ON WEDNESDAY, MARCH 3 ON THIS
MATTER BEFORE THE SUBCOMMITTEE ON PRIORITIES AND
ECONOMIES IN GOVERNMENT OF THE JOINT ECONOMIC COMMITTEE
(PROXMIRE). IF YOU DISAGREE WITH THIS APPROACH, I NEED
YOUR VIEWS PRIOR TO HIS APPEARANCE. END TEXT.
APPROVE; DISAPPROVE.

DRAFTED. L:MFELDMAN:EB/IFD:PBOEKER
CLEARED: S:PBARBIAN

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